

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.11327 of 2002

Dated:01.11.2006

Between

N. Varalakshmi
.....Petitioner

and

1. The Deputy Registrar of
Cooperative Societies, Bhimavaram,
West Godavari District and others

...Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.11327 of 2002

ORDER:

This writ petition is filed being aggrieved by an order dated 15.04.2002 made in OA No.50 of 2000 on the file of the 3rd respondent confirming the order dated 19.05.2000 passed by the 1st respondent *vide* his proceedings in Rc.No.5065/98-B(S.2).

It appears that the impugned proceedings were passed by the surcharge authority under Section 60 (1) of the Andhra Pradesh Cooperative Societies Act, 1964 (for short 'the Act') making the petitioner liable for certain deficiencies purported to have been caused by her as to the assets of the Bank, i.e., (1) Rs.25,422/- being the amount paid to the NMRs as salaries (2) Rs.2,87,167/- being the loan amount sanctioned to the members. Insofar as item No.1 is concerned, the allegation is that the

petitioner appointed two NMRs and paid them Rs.30/- per day without approval of the higher authorities. Insofar as Item No.2 is concerned, it is alleged that the petitioner, as a President of the Managing Committee, advanced loans to its members without verifying the grounding of the units, for which, the loans were advanced and thereafter, not taken any steps for recovery of the said amounts. The petitioner made certain objections to the surcharge authority. After considering the record, the recovery was ordered for the above said amounts *vide* order dated 19.5.2000. Aggrieved by the same, the petitioner carried the matter in appeal being OA No.50 of 2000. Insofar as the appointment of NMRs without approval of the higher authorities and causing deficiency of funds to the extent of Rs.25,422/- is concerned, the appellate authority, having satisfied that the action of the petitioner was thereafter ratified by the higher authorities, deleted the said amount from the recovery. Insofar as the 2nd item is concerned, i.e., the loan amount being sanctioned

to the members, the appellate authority confirmed the recovery order passed by the surcharge authority.

Learned counsel for the petitioner strenuously contended that no procedure as known to law has been followed before coming to the conclusion that the petitioner is liable for payment of certain amounts against item No.2. The only finding recorded by the surcharge authority is that the board has sanctioned loans to 71 members of the Society and on 31.3.1997 disbursed the amount to a tune of Rs.3,34,000/- and refunded the subsidy amount of Rs.3,35,360/- to DRDA on 29.12.1998. It was further found that an amount of Rs.46,833/- was recovered out of Rs.3,34,000/-, and an amount of Rs.2,87,167/- is pending recovery from the members. Therefore, the surcharge authority came to the conclusion that the President and Board of Directors are responsible for payment of Rs.2,87,167/-.

As contended by the learned counsel for the petitioner, absolutely, there is no finding as to

whether the petitioner and other Board members have been asked to produce any evidence for the purpose of recovering the loans from the members to whom they were advanced. Simply because, the Board headed by the petitioner advanced loans to 71 members and only an amount of Rs.43,597/- was recovered and the rest of the amount could not be recovered, the President and the Board of Directors cannot be held responsible for payment of Rs.2,87,167/-. Absolutely, there is no finding that in spite of best efforts made by the Society, those amounts could not be recovered from the members or there is no other way for recovering those amounts under the Act.

In view of the above, the order passed by the Surcharge authority as confirmed by the appellate authority in respect of item No.2 is in gross violation of the principles of natural justice and procedure, and the same is liable to be set aside. Insofar as item No.1 is concerned, the findings recorded by the appellate Tribunal are confirmed. Therefore, the matter is remitted to the surcharge authority under

Section 60 (1) of the Act for fresh consideration, after putting the petitioner on notice and hearing her personally, and dispose of the same, within a period of two months from the date of receipt of this order.

Writ petition is allowed to the extent indicated above. No costs.

01-11-2006

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